

**TAX DITCH RIGHT-OF-WAY TASK FORCE**  
**February 15, 2008**  
**Minutes**

Representative Thornburg called the meeting to order at 10:01 a.m.

The following Task Force Members were present: Rep. V. George Carey, Doug Corey, Lauren Alberti, Mike Brown, Fred Mott, Bill Vanderwende, Carlton Fifer, Frank Piorko, Dave Toomey, Gary Dodge, Rep. Pam Thornburg, Elton Murray, Ed Jestice, and Richard James. Also present were the following: Debbie Absher (Sussex Conservation District), Bob Enright, Michele Garner, and Brooks Cahall (DNREC).

A motion was made and passed to approve the agenda.

A motion was made and passed to approve the minutes of January 25, 2008, as written.

Mike Brown gave an update of the National Association of Conservation Districts conference, recently held in Reno, Nevada.

Frank Piorko discussed the legislation which would be necessary regarding "grandfathering" and the definitions of permanent obstructions. Current tax ditch law (Title 7, Chapter 41, Subsection 4186) allows for recourse and penalties for persons who negligently or knowingly obstruct any part of a tax ditch.

Recommendation #5 and its most recent revisions from the January 25<sup>th</sup> meeting were discussed. It was noted that any increased assessment and/or a special assessment will need to be included with any Agreement or Court Order Change (COC) and recorded. The recording of Agreements between landowners and the Tax Ditch Managers and COC's was discussed. The documents/agreements will need to be filed in the Recorder of Deeds office in order to be a matter of public record and notice. The responsibility of filing Agreements and filing fees would be at the requesting landowner's expense. A copy of any Agreement would need to be kept by the Tax Ditch and the Division of Soil & Water Conservation.

Proposed grandfathered structures were discussed. It was suggested that an increased assessment be assigned to parcels which would have grandfathered structures that cause increased maintenance and cleanout costs to the Tax Ditch. It was noted that to do so would negate the purpose of "grandfathering". Additional cost shared funds to tax ditches which have increased costs associated with grandfathered structures would need to be obtained. This matter will be discussed by the Sunset Committee on Conservation Districts. Grandfathered structures would be considered "conforming structures" and would only include structures within the tax ditch right-of-way prior to enactment of legislation.

Legal non-conforming structures and illegal non-conforming structures were discussed.

- Structures placed or built within the tax ditch right-of-way after legislation is enacted and **with** a recorded Agreement or Court Order Change would be considered "legal non-conforming structures".

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- Structures placed or built within the tax ditch right-of-way after legislation is enacted and **without** a recorded Agreement or Court Order Change would be considered “non-conforming structures”.

It was determined that the County (Kent, Sussex, and New Castle) Planning and Zoning Departments need to be included in the process. Presently, landowners obtain building permits and build within tax ditch rights-of-way. It was noted that since notice of Tax Ditch assessment and/or rights-of-way are now recorded in the Recorder of Deeds Office and are “of public record” which leaves the burden of violation of rights-of-way on the landowner, it is acknowledge that the average landowner would not search the public record prior to obtaining a building permit. Municipalities were also determined as needing to be involved in the process. It was decided that each County Administrator and the League of Local Governments would be contacted regarding sending a representative to the next Task Force meeting.

Mr. Vanderwende stated that the Sussex Conservation District would be meeting with the County on February 26, 2008, the tax ditch rights-of-way concerns would be brought up.

Recommendation #8 regarding education was discussed. The Sussex County Association of Towns, League of Local Governments and other such entities that have members who issue building permits will be included in education outreach efforts. A notice to all landowners affected by a tax ditch right-of-way would also be a key education component.

The present Court Order Change process was discussed regarding the signatures of Managers. Present law does not require Tax Ditch Managers sign these documents. The Division of Soil and Water Conservation practice of many years has been to include the Tax Ditch Managers as signers to Court Order Change documents as a matter of courtesy. There has only been a couple of instances in recent years where Managers did not sign these documents. Based on a legal opinion and Task Force members concurrence, that since this practice has been working, the present law regarding signatures to Court Order Change documents should remain as is.

A discussion was held concerning the proposed “Appeals Board”. The discussion included concerns that since the present law already provides landowners access to “appeal” to Superior Court when an agreement cannot be reached through traditional Court Order Change agreement, that an Appeals Board is not necessary and may complicate an already overtaxed system.

Tax Ditch rights-of-way in the new development process was discussed. Presently, as part of the required storm water management plan process, tax ditch rights-of-way are included in the review and approval of plans. The Division of Soil and Water Conservation works with Tax Ditch Managers and Developers in negotiating reduced rights-of-way. It was determined that while an Appeals Board may speed up the process for a developer to pursue a project which was denied a reduction of a tax ditch right-of-way (versus the Petitioning of Superior Court), it has to-date been largely unnecessary.

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The tax ditch statute would need to be amended to include filing requirements regarding Agreements into the Recorder of Deeds office.

It was decided that the feasibility of an "Appeals Board" would be discussed further at the next meeting.

For discussion at the next meeting:

- Appeals Board
- Education

The next meeting of the Tax Ditch Right-of-Way Task Force is scheduled for March 3, 2008, 10:00 a.m. – 12:30 p.m. in the Majority House Hearing Room, Legislative Hall, 411 Legislative Avenue, Dover. A light lunch will be provided.

Meeting adjourned at 12:15 p.m.

Respectfully Submitted

A handwritten signature in cursive script that reads "Michele L. Garner".

Michele L. Garner  
Administrative Specialist II